

(2005) 09 AHC CK 0330

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48737 of 2004

Devyani Beverages Ltd.

APPELLANT

Vs

Labour Court II, Deputy Labour Commissioner and Devendra
Singh

RESPONDENT

Date of Decision : 14-09-2005

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 12(9)

Citation : (2005) 6 AWC 6249 : (2006) 108 FLR 426

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Shakti Swarup Nigam, for the Appellant; Bushra Maryam and S.C.,
for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—A dispute between the respondent No. 3-Devendra Singh (workman) and the petitioner M/s Devyani Beverages Limited (employer) was referred to the Labour Court which was to the effect that whether the termination of the workman from the post of Checker by order dated 10.12.1997 was in accordance with law or not; and if not, to what relief would the workman be entitled to. Proceedings before the Labour Court had commenced and a perusal of the order-sheet (Annexure-1 to the writ petition) show that on service of notice to the employer (petitioner), a written statement was filed by them on 1.10.1999; which was taken on record. Since the workman did not appear, by the same order, after taking service of notice on the workman to be sufficient, it was directed that the right of the workman to file his written statement was forfeited. Thereafter, since there was no Presiding Officer posted in the Labour Court for more than two years, the matter was adjourned from time to time. After the new Presiding Officer joined, the workman filed his written statement on 23.7.2002. Fresh notice to the employer was issued by the Labour Court on 2.8.2002, which was returned back unserved and thus the Labour Court

proceeded ex parte against the petitioner. After hearing the workman, and on the averments made in his written statement, by an award dated 10.2.2003, the Labour Court allowed the claim of the workman, which was published on 21.10.2003. The petitioner thereafter filed a restoration application on 3.2.2004, with the prayer for recalling the ex-parte award. Such application was rejected by the Labour Court on 26.10.2004. Aggrieved by the aforesaid order and the ex-parte award, the petitioner has filed this writ petition. Besides this, the petitioner has also challenged the consequential order dated 21.9.2004 by which recovery has been initiated against the petitioner and also the earlier order dated 23.7.2002 by which the written statement of the workman had been taken on record by the Labour Court, ignoring its earlier order dated 1.10.1999.

2. I have heard Sri Shakti Swaroop Nigam, learned counsel appearing for the petitioner, as well as Miss Bushra Maryam on behalf of the contesting respondent No. 3 (workman), and have perused the record. Counter and rejoinder affidavits have been exchanged -between the contesting parties and, with the consent of the learned counsel for the parties, this writ petition is being disposed of at the admission, stage itself.

3. The submission of Sri Nigam, learned counsel for the petitioner is that (i) the written statement of the workman could not have been accepted on 23.7.2002 once the Labour Court, vide order dated 1.10.1999, had already forfeited his right of filing his written statement, which order had not been challenged and had become final; (ii) the summons sent by the Labour Court on 2.8.2002 were never served on the petitioner, and as such the restoration application ought to have been allowed and the ex-parte award recalled; (iii) the entire case of the workman, as stated in his written statement, has been accepted without the Labour Court even verifying its correctness; and (iv) no finding of its own has been recorded by the Labour Court while allowing the claim of the workman.

4. Miss Maryam, learned counsel appearing for the contesting respondent-workman has, however, submitted that in the circumstances, since the registered notice sent to the employer on 2.8.2002 had been returned unserved, the service on the petitioner was rightly taken to be deemed sufficient and as such, when the petitioner did not appear, the award has correctly been passed under Rule 12 (9) of the U.P. Industrial Disputes Rules, 1957. It has also been contended that since the restoration application of the employer had been filed after much delay, the same was rightly rejected by the Labour Court.

5. A perusal of the order-sheet reveals that the written statement of the employer (petitioner) had been filed before the Labour Court on 1.10.1999. The mention of filing of such written statement has also been made in the impugned award dated 10.2.2003. By the order dated 1.10.1999, the right of the workman to file written statement had also been forfeited. I However, without taking the said order dated 1.10.1999 into account and without recalling the same, the Labour Court, on 23.7.2002, accepted the written statement of the workman. The same does not appear to be justified. If at all the written statement of the

workman had to be accepted, the order dated 1.10.1999 should first have been recalled and before doing so, an opportunity ought to have been afforded to the employer. No such procedure had been adopted by the Labour Court before accepting the written statement of the workman.

6. It is true that the petitioner-employer had appeared before the Labour Court at the initial stage and the record reveals that they had also filed their written statement on 1.10.1999. However, as there was no Presiding Officer posted for more than two years and after the ? new Presiding Officer had joined, he rightly chose to send fresh notice to the parties. The notice sent to the employer on 2.8.2002 was returned back unserved. The record does not reveal that the Labour Court, at any stage of the proceedings, had recorded its finding to the effect that on return of unserved notice, the service on the employer would be deemed sufficient. Merely because the registered notice sent to a party is returned back unserved would not automatically lead to the presumption of deemed service. The satisfaction of the Court concerned, on the facts and circumstances of the case, has to be specifically recorded in this regard. Thus, on the facts of this case, it does not appear that the petitioner-employer, who had earlier appeared to contest the case and also filed his written statement, would deliberately avoid appearing in the proceedings before the Labour Court if the notice had actually been served on the employer.

7. In the case of Power Grid Corporation of India v. Presiding Officer, Labour Court 2002 I LLJ 155, this Court has held that "it is well settled legal position that when sufficient cause is made out for non-appearance on the date fixed, the ex-parte order should normally be recalled or set aside and the matter be decided on merit after giving due opportunity to all the parties." The decision of this Court in the case of Suresh Chandra Sharma Vs. Presiding Officer, Labour Court, IV and Others, as has been relied upon by the learned counsel for the respondent, is distinguishable on facts as that case related to a matter where the authorized representative of the employer appeared on one date and thereafter chose not to appear and thus the ex-parte award had been passed. In the present case after the filing of the written statement by the employer, there was no Presiding Officer for more than 2 years and fresh notice to the employer issued by the Labour Court was never held to have been duly served. Thus, in my view the restoration application should not have been rejected outright without considering this aspect of the matter. In the absence of any finding recorded by the Labour Court about the service of notice to the employer, the order dated 26.10.2004 rejecting the restoration application of the petitioner as well" as the ex-parte award dated 10.2.2003 deserve to be set aside on this ground alone.

8. As regards the merits of the claim of the workman, a perusal of the award shows that without even discussing any evidence, and without actually recording any finding that the workman had worked for more than 240 days in a year or that he was ever paid any wages or salary, the Labour Court arrived at a conclusion that the passing of the oral termination order dated 10.12.1997

passed by the employer was not justified, and after quashing the same, allowed the entire claim of the workman. As already stated above, in the award itself it has been recorded that the written statement of the employer had been filed. The Labour Court, thus, before passing the award on merits, ought to have also considered the case of the employer as set out in their written statement, even if the employer, for any reason, could not participate in the proceedings subsequently. In the absence of the same, the ex parte award passed by the Labour Court deserves to be, set aside on this count also.

9. The Apex. Court in the case of *The Range Forest Officer Vs. S.T. Hadimani*, has observed that " Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

10. In *Manager, Reserve Bank of India v. S. Mani* 2005 S.C.C. 609, the Supreme Court held that "A party to the lis may or may not succeed in its defence. A party to the Us may be filing representations or raising demands, but filing of such . representations or raising of demands cannot be treated as circumstances to prove their case."

11. The Supreme Court in the case of *Municipal Corporation, Faridabad Vs. Siri Niwas*, observed that "... From the award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the appellant herein including the muster rolls. It is improbable that a person working in a local authority would not be in possession of any documentary evidence to support his claim before the Tribunal Apart from muster rolls he could have shown the terms and conditions of his offer of appoitment and the remuneration received by him for working during the aforementioned period. He did not even examine any other witness in support of his case." Molding the same to be insufficient evidence for proving his claim, the judgment of the High Court passed in favour of the workman was set aside.

12. Accordingly, even though Rule 12 (9) of the U.P. Industrial Disputes Rules, 1957 provides that if the affidavit accompanying the written statement of the workman is not rebutted by the employer, the Labour Court shall presume the contents of the affidavit to be true and make an award accepting the facts stated in the written statement, but, it cannot thus be construed to mean that the entire averments made in the affidavit, without any documentary or oral evidence, have to be accepted in toto without the Labour Court examining the same judiciously. The labour laws of this country may be welfare legislation which may not require a strict procedure to be followed as held by the Supreme Court in the case of *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat*

Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi, (which has been relied upon by the learned counsel for the respondents) but the same would not mean that the procedure, of accepting and relying. of evidence before the Court is not to be followed.

13. In the present cast, the award has been passed merely on the basis of the written statement of the employee. The entire award is bereft of any discussion on the merits of the case. A perusal of the award shows that only the case of the workman has been set out and without analytically examining the material on record and recording reasons for its conclusion, the claim of the employer has been allowed simply on account of the provisions of Rule 12 (9) of the U.P. Industrial Disputes Rules, 1957. The said award being totally unsupported by reasons or discussions, cannot be said to be an award on merits of the case. Failure to give reasons would amount to denial of justice. The award speaks of the filing of the written statement by the employer but has not dealt on the comparative merit of the claims and counter claims. Jumping to the conclusion that the termination of the workman was illegal after merely setting out the factual aspect of the case, and without discussing the merits, would render the award illegal and unsustainable in law. There is no analytical examination of the merits of the claim which shows total non-application of mind.

14. For the foregoing reasons, the order dated 26.10.2004 rejecting the restoration application, as well as the ex parte award dated 10.2.2003 deserved to be quashed, which is hereby done. The consequential order dated 21.9.2004 directing recovery to be made from the petitioner in pursuance of the said award, is also quashed. However, the matter is remitted back to the Labour Court with the direction that the reference may be decided afresh after giving opportunity of hearing to the concerned parties. Sri Nigam, learned counsel for the petitioner as well as Miss Mary am, learned counsel for the contesting respondent No. 3, both state that their respective clients shall file their written statements within six weeks from today. The reply to the written statement may be exchanged within one month thereafter. The Labour Court shall proceed to decide the matter in accordance with law, as expeditiously as possible, preferably within six months from the date of exchange of affidavits.

15. In the circumstances of this case, since the workman is out of job and has been contesting the matter for a reasonably long period, the petitioner is directed to pay Rs. 5,000/- as costs to the respondent No. 3 within six weeks.

16. Accordingly, this writ petition stands allowed, but however on payment of cost of Rs. 5,000/- by the petitioner (employer) to the respondent No. 3 (workman)